

Chapter 2: Registrations and Exemptions

Processing the applications for registration

2.1 It is a mandatory requirement for Charitable trusts/Institutions (Trusts) to get registration under Act for claiming exemption. A Trust shall apply in the prescribed form along with necessary documents to CsCIT/CsIT/DsIT-E to get itself registered/approved/notified. Thereafter, the concerned authority (**Annex 2**) after verifying the genuineness and objectives of Trusts shall issue or reject registration/approval/notification within the prescribed time limit of 06 months/12 months.

2.2 We observed in 554 assessments units that ITD received 1.75 lakh applications of Trusts during FY 09 to FY 11 for granting registrations/approvals or issuing notifications for claiming exemption. Of the applications received, CsCIT/CsIT/DsIT-E granted 0.90 lakh registrations/approvals/notifications, rejected 0.36 lakh applications and 0.49 lakh applications were pending for disposal. We scrutinized all the 0.90 lakh cases where ITD granted registrations/approvals/notifications and noticed procedural mistakes in 6948 cases (7.72 %). The procedural mistakes are summarized below.

ITD granted registrations/approvals/notifications to the 799 Trusts without verifying necessary documents such as copy of the Trust Deed, proper clauses in the Trust Deed, audited accounts etc.

Grant of approval/registration without adequate documents

2.3 Income Tax Rule (Rule) 17A(a) provides that Trust should produce the Trust Deed along with an application in Form 10A either in original or a certified copy thereof to establish that Trust is created under an instrument together with two copies of audited accounts in Form 10B.

2.4 We observed that in 342 cases, ITD granted approvals/registrations/notifications in the absence of certified copy of the Trust Deed or prescribed copies of audited accounts etc (see Box 2.1).

Box 2.1: Illustrative Case

In Karnataka, CIT Davangere granted registration u/s 12A to **Perioalumni** on 25 March 2008. The association was created without any Trust Deed or Memorandum of Association. The resolution revealed that its aims and objectives were meant to cater to the needs of the members of the association but not to the needs or objects of the general public. Besides, none of its activities fell under the ambit of charitable purpose as defined u/s 2(15) of Act.

2.5 *The Ministry accepted (May 2013) the audit observation illustrated at Box 2.1 and withdrew the registration in April 2013.*

2.6 *Audit is of the view that the Ministry may review the exemptions granted to the assessee and also evolve a system so that no registration is granted to Trust without*

calling for prescribed documents such as copy of Trust deed, copies of audited accounts etc.

Non inclusion of dissolution clause in the Trust Deed

2.7 Para 2.7 (viii) of the Manual of Office Procedure (Volume-II) of ITD, inter alia, provides that in case of dissolution of a Trust, its net assets after meeting all its liabilities, should not revert to its founder, members, directors, donors etc. but used for its objects. In the absence of dissolution clause, the corpus of Trust is susceptible to misuse at the time of dissolution.

2.8 We observed that ITD granted approvals/registrations/notifications in 457 cases in which there was no dissolution clause in the Trust Deed (see Box 2.2).

Box 2.2: Illustrative Case

In the case of **Mumbai Railway Vikas Corporation** during AY 10 in DIT-E, Mumbai, the Trust Deed was silent about the dissolution clause. Assets and surplus were distributable amongst the shareholders and not to be given to some other Trusts for objects similar to Trusts. Similarly, in another case of **Sterlite Foundation**, the Managing Trustee was nominated always from the settler's family.

2.9 *The Ministry stated (May 2013) that in Mumbai & Gujarat, Bombay Public Trust Act, 1980 ensure that no amount can go back to any founder etc because properties are transferred with the permission of the Charity Commissioner only to other Trusts having similar objects. Thus inclusion of dissolution clause in the deed is neither necessary nor legal in States where specific legislation bars such reversion.*

2.10 *Audit is of the view that clauses in local legislation applicable to particular States do not cover across the country. Further, procedures prescribed in other Acts cannot be enforced under Income Tax Act which does not specify the fate of assets and properties generated out of public monies by Trusts exempted from tax. The Ministry has not highlighted the number of cases where the Charity Commissioner has taken action to revert the assets to other Trusts having similar objects. Therefore, the Ministry should insist upon inclusion of 'Dissolution Clause' in the Trust deed in all the States whether local legislation exists or not.*

ITD granted registrations/approvals/notifications to 73 Trusts having no PAN which is in contravention of the provisions of Act.

Grant of registration without PAN

2.11 Under section 139A of Act, quoting of Permanent Account number (PAN) is made obligatory while filing documents/returns with ITD as it is the unique identity code of the tax payer. For obtaining registration u/s 12A, Trust has to apply in Form No 10A prescribed in Rule 17A of Income Tax Rules, 1962.

2.12 We observed that ITD granted registrations and allowed exemptions to charitable trusts in 73 cases where PAN was missing. Further, Form 10 A does not have a column for quoting PAN and thereby it is not binding upon assessee to obtain PAN

before applying for the registration u/s 12A. In the absence of PAN, it is difficult to track such assessee who are not filing returns.

2.13 *The Ministry agreed (May 2013) to examine the incorporation of PAN in Form 10A.*

ITD granted approvals /registrations in 60 cases involving tax effect of ₹ 87.33 crore irregularly to Trusts whose objects were not charitable in nature.

Irregular exemption to Trusts which were not charitable in nature

2.14 According to the amended provision of Section 2(15) of Act with effect from 01 April 2009, any activity in the nature of rendering any service or any service in relation to any trade, commerce or business for a cess or any other consideration will not come under the purview of charitable purpose.

2.15 We noticed that ITD granted exemptions to Trusts in 60 cases involving tax effect of ₹ 87.33 crore where whose objects were not charitable in nature (see Box 2.3).

Box 2.3: Illustrative Case

In DIT-E, Mumbai, ITD allowed **Society for Applied Microwave Electronics Engineering & Research** exemption u/s 11 during AY 09 and AY 10. The activities of the assessee were not charitable in nature but purely a research work for which separate provisions have been provided in Act. The assessee received ₹ 44.80 crore as grant from the Government together with other income and earned a surplus of ₹ 19.85 crore which was exempted by way of accumulation without following procedure laid down u/s 11(2) of Act. Irregular exemption allowed to research trusts resulted in underassessment of income aggregating ₹ 31.31 crore involving short levy of tax of ₹ 10.63 crore.

2.16 *The Ministry agreed (May 2013) to examine the illustrated case at Box 2.4. However, the Ministry replied in July 2013 that undertaking scientific research has been held to be an object of general public utility hence eligible for registration u/s. 12A.*

2.17 *Audit in addition to the illustrated case, also pointed out the cases where the activities of the assessee to whom the exemption was given under section 12 were not charitable in nature as per section 2(15) of Act. They were rendering services in relation to trade, commerce or business for a cess or any other consideration which do not come under the purview of charitable purpose. Therefore the Ministry, in addition to examining the cases, may issue suitable instructions that AO should allow exemption to Trusts who have application of income only for charitable purposes covered under section 2(15) of Act. Further, separate provisions exist in Act to the research institutions for availing exemption. Competent authorities may examine the activities/objectives of the assessee to justify granting registration under section 12AA instead of under section 10 (21) read with section 35 of Act.*

There was no correlation in granting or rejecting approvals/registrations among different authorities. ITD did not take action to cancel registration in three cases involving tax effect of ₹ 4.94 crore.

Non-correlation of registration/approval allowed by different exemption authorities

2.18 The concerned CCIT is the competent authority for issuing notifications u/s 10(23C) while the CIT in regular charge and DIT-E are the competent authority for granting registration u/s section 12A.

2.19 We observed that in three cases involving tax effect of ₹ 4.94 crore in which one ITD authority allowed registration for exemption. Another authority denied registration to these Trusts on the ground that Trusts did not exist for charitable/education purpose but for profit motive. However, ITD did not take action to cancel the registration of Trusts granted by the former authority and allowed exemption (see Box 2.4).

Box 2.4: Illustrative Case

In DIT-E, Mumbai, **Breach Candy Hospital** was granted registration u/s 12A in September 2007 and allowed exemption u/s 11 for AY 09. However, CCIT rejected approval u/s 10(23C) on 25 April 2010 for AY 03 to AY 11 on the ground of profit motive and no philanthropy. ITD did not take action to cancel the registration u/s 12A and disallow the exemption u/s 11. This resulted in underassessment of income of ₹ 14.56 crore involving tax effect of ₹ 4.94 crore.

2.20 *The Ministry stated (May 2013) that approval under section 10(23C) given by CCIT, is denied in a particular case whereas registration is granted because requirement for registration and approval are different. The Ministry further stated that eligibility for section 10 (23C) approvals is more restrictive than for registration under section 12AA. It is therefore possible that approval under section 10(23C) is refused, even though Trust continues to be registered under section 12AA.*

2.21 *Audit is of the view that there is lack of coordination among authorities denying the approval and exemption allowed by the AOs. The assessee and its core activities remain the same even if it is registered /approved on different sections. Since the eligibility for section 10(23C) is more restrictive than for registration under section 12AA, AO may allow exemption under section 11/12 after examination of facts of application of income with reference to order denying the approval.*

ITD granted registration/exemption in 161 cases irregularly involving revenue impact of ₹ 24.23 crore with retrospective effect contravening provisions contained in Act.

Grant of registration/exemptions with retrospective effect

2.22 As per Section 12A(2) of Act where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made.

2.23 We noticed that ITD granted registration to 161 Trusts from the period prior to which they filed applications for grant of registrations. Due to this, Trusts claimed irregular exemptions involving tax effect of ₹ 24.23 crore (see Box 2.5).

Box 2.5: Illustrative Case

a. In Madhya Pradesh, CIT Gwalior granted registration under section 12A to **Om Charitable Chikitsa, Gwalior** on 14 July 2010 with effect from AY 11. However, AO allowed exemption to the assessee for AY 08, AY 09 & AY 10. This resulted in irregular exemption without issue of registration involving tax effect of ₹ 24.80 lakh.

b. In Kerala, CIT Trivandrum, ITD completed assessments of **Kerala State Higher Education Council** for the AY 09 and AY 10 in summary manner in October 2010 allowing exemption of ₹ 61.18 lakh and ₹ 4.42 crore respectively u/s 11. ITD granted registration under Section 12A to assessee from AY 11 only. Irregular grant of exemptions involved total tax effect of ₹ 2.17 crore.

2.24 *The Ministry accepted (May 2013) audit observations illustrated at Box 2.6 and initiated remedial actions. However, they stated that many of these cases appear to be summary assessment.*

2.25 *Audit emphasize that more than 95 percent assessments of Trusts are finalized in summary. Therefore, CBDT may strengthen internal control mechanism to minimize such type of mistakes in summary assessment also.*

There was a delay of more than 6 months to 24 months beyond stipulated period in granting approvals/registrations/notifications in 594 cases. The delay on the part of ITD resulted in deemed approval, to Trusts which were otherwise not eligible.

Delay in granting registration/approval/notification

2.26 Section 12AA/Rule 11AA(6) of Act provides that Commissioner shall pass an order for registration/notification u/s 12A/80(G) or reject the application within six months from the date on which such application was made. However, Section 10(23C) provides time limit for granting approval or rejecting the application within a period of 12 months from the end of the month in which such application is received.

2.27 Act is not explicit about the consequences/remedies available in case an application is not processed within six months. Though there is a provision for appeal against refusal, no provision is there with regard to the delay made in processing the application. However, it was held¹⁰ that the purpose of providing six month's time limit to the CIT would become meaningless if there is no cause of action or outcome at the end of six months. Therefore, after the expiry of six months the registration will be deemed to have been granted.

2.28 We noticed that in 594 Trust cases, ITD delayed in issuance of registration/approval/notification after stipulated period of 6 or 12 months (see Box 2.6).

¹⁰ Society for the promotion of Education, Adventure Sport & Conservation of Environment Vs. CIT(2008)171 Taxmann 113(ALL)

Box 2.6: Illustrative Case

In Madhya Pradesh, CIT Gwalior rejected the application of **Sarva Seva Samarpit Samiti** submitted for registration u/s 12AA on 18 June 2009 after stipulated period of six months on 29 January 2010. On appeal, ITAT set aside the order of CIT vide its order dated 28 May 2010 on the ground that CIT had passed its order after stipulated period of six months. Delay in rejection of the application within stipulated period by the CIT resulted in incorrect grant of approval to an institute which was not even eligible in the opinion of the CIT.

2.29 *The Ministry accepted (May 2013) audit observation illustrated at Box 2.7. However, they stated that delays had taken place in exceptional cases. The time limit of 6 months is generally being followed.*

2.30 *Audit is of the view that delays noticed in granting approval in 594 cases may not be exceptional. The Ministry may also ensure that time limit for passing order u/s 10(23C), 12A and 80G of the Act is adhered invariably in all the case; otherwise responsibility may be fixed for delay in granting approval so that only eligible Trusts are allowed exemption.*

ITD allowed irregular exemptions involving tax effect of ₹ 8.88 crore to 53 Trusts without granting registrations /approvals/notifications.

Exemption granted without registration/approval/notification

2.31 Section 12A of Act provides that the benefits under section 11 and 12 will not be available unless conditions specified in clauses (a) and (b) of section 12A are satisfied. The Supreme Court held¹¹ that unless and until an institution is registered under section 12A, it is not entitled to claim exemption from payment of tax under section 11 and 12.

2.32 We noticed that in 53 cases involving tax effect of ₹ 8.88 crore, ITD allowed exemptions irregularly without granting registrations (see Box 2.7).

Box 2.7: Illustrative Case

In Madhya Pradesh, CIT-II Jabalpur granted registration u/s 12A to **Vikas Mytri Sisters of St. Joseph of Tarbes**, Kotma on 03 February 2011 with effect from 01 April 2011. However, during AY 2010-11 and AY 2011-12 the assessee had claimed exemption and ITD allowed it u/s 11 & 12. It resulted in under assessment of income by ₹ 34 lakh for AY 2010-11 and ₹ 61 lakh for AY 2011-12 This resulted in short charge of tax of ₹ 28.50 lakh.

2.33 *The Ministry stated (May 2013) that mistakes are few and in exceptional cases.*

2.34 *Audit is of the view that mistakes noticed in audit are not exceptional. The Ministry may ensure that AO ascertain the registration status of the assessee invariably in all the cases before allowing exemption.*

ITD allowed exemptions in 72 cases irregularly involving tax effect of ₹ 8.88 crore despite rejection of registrations/approvals by the competent authority

Exemption granted despite rejection of registration/approval/Notification

2.35 A Trust has to register itself with the jurisdictional DIT/CIT for claiming exemption u/s 12A/10(23C). Exemption under section 11 & 12 /10(23C) is available from AY immediately following registration/approval is allowed.

¹¹ U.P. Forest Corporation Vs. CT(2007) 165 Taxman 533 (SC)

2.36 We observed that in 72 Trust cases, AOs have irregularly granted exemptions to Trusts despite rejection of registrations/approvals involving tax effect of ₹ 8.88 crore (see Box 2.8).

Box 2.8: Illustrative Case

In Bihar, CIT Patna, CIT denied exemption u/s 10(23C)(iiiab) to **Bihar State Madarsa Educational Board**, in AY 07 on the ground that it was not wholly or substantially financed by the Government of Bihar, thus not falling under the preview of section 10(23C)(iiiab). CIT (A) granted relief only for the grant received from Government of Bihar. ITD charged tax in AY 08 & AY 09. However, ITD allowed exemption claimed for the AY 10 at summary stage irregularly. The irregular exemption resulted in underassessment of income of ₹ 6.33 crore with consequent non levy of tax of ₹ 3.27 crore.

2.37 *The Ministry stated (May 2013) that they have initiated remedial action u/s 147 in respect of illustrated case at Box 2.9. However, the assessee has gone to ITAT appeal for all the AYs. The Ministry further stated that mistakes are mostly in summary cases and exceptional in nature.*

2.38 *Audit is of the view that summary assessment should not be an excuse for such mistakes. There should be an effective mechanism which ensures that once a Trust is denied registration, it does not get further exemption as a Trust either in summary or scrutiny assessment. The Ministry may issue suitable instructions in this regard.*

2.39 *The Ministry further stated in (July 2013) that a copy of the rejection order is always sent to AO so that no exemption is allowed in such cases. However, since large numbers of these cases are accepted under summary scheme, such mistakes occur. Such mistakes can however be avoided if the software of the ITD is modified whereby the registration/cancellation module is linked with the assessment module.*

ITD allowed exemptions in 9 cases irregularly u/s 10(23C) (iiiia)/(iiiad) involving tax effect of ₹ 2.39 crore though the gross receipt exceeded ₹ one crore.

Exemption granted though the gross receipt exceeded ₹ one crore

2.40 Exemption u/s 10(23C)(iiiia) and 10(23C)(iiiad) is available to a University or other educational institution substantially financed by Government or who carries on educational activities for charitable purpose and not for the purpose of profit if the gross receipt of such institution is less than ₹ one crore. Where gross receipt exceeds ₹ one crore, approval from the CCIT is required in order to avail exemption u/s 10(23C)(vi).

2.41 We noticed that in 9 cases involving tax effect of ₹ 2.39 crore, ITD granted exemption where gross receipts exceeded ₹ one crore and the institutions were not substantially financed by Government (see Box 2.9).

Box 2.9: Illustrative Case

In Haryana, CIT Faridabad, AO completed the assessment of **Vidya Mandir** for AY 07 after scrutiny in December 2008 allowing exemption u/s 10(23C)(iiiad). We observed that though the gross receipts of the assessee trust exceeded prescribed limit of ₹ 1.00 crore, approval of the prescribed authority required under section 10(23C)(vi) was not obtained. This had resulted in irregular exemption of ₹ 1.66 crore involving tax effect of ₹ 97.89 lakh.

2.42 *The Ministry stated (May 2013) that they are examining the applicability of facts of all cited cases.*

2.43 *Audit is of the view that the Ministry may ensure that AOs check the status of registration of the assessee invariably in all such cases before allowing exemption.*

2.44 *The Ministry further stated (July 2013) that such mistakes can however be avoided if the software of the ITD is modified whereby the registration/cancellation module is linked with the assessment module. Audit also recommends the modification in the assessment module.*

ITD allowed exemptions in 9 cases irregularly u/s 80G though prescribed conditions were not fulfilled.

Exemption allowed under section 80G though prescribed conditions not satisfied

2.45 Section 80G(5)(ii) read with section 80G(5B) prescribes that for being eligible for 80G notification, the maximum application towards the religious purposes should not exceed five *per cent* of the income of any previous year.

2.46 In DIT-E, Mumbai, ITD issued notification under section 80G in nine cases despite expenditure of the trust on religious purposes being in excess of five *per cent* of its total income.

2.47 *The Ministry stated (May 2013) that these are exceptional cases and they generally implement the provision.*

2.48 *Audit is of the view that the Ministry may reiterate suitable instructions for effective monitoring to minimize such type of mistakes.*

ITD granted exemptions in 117 cases irregularly without submission of audit reports with the returns.

Exemption granted without submission of Audit report

2.49 Section 12A (1)(b) & 10(23C) provides that if the total income of Trust as computed under Act before exemption under Sections 11 and 12 exceeds the maximum amount which is not chargeable to income tax in any previous year, the accounts of the Trust for that year are required to be audited by an accountant as defined in the Explanation to Section 228(2) and the Audit Report in Form-10B vide Rule 17B is to be filed along with return of Income.

2.50 We observed that ITD allowed exemptions to 117 Trusts without submission of the Audit Reports (see Box 2.10).

Box 2.10: Illustrative Case

In West Bengal, DIT-E, Kolkata, ITD allowed exemption of ₹ 4.98 crore & ₹ 6.65 crore during AY 10 and AY 11 respectively to **Susrut Eye Foundation & Research Centre** without submitting the Audit Report.

2.51 *The Ministry again stated (May 2013) that mistakes are mostly in summary cases and exceptional in nature.*

2.52 *Audit is of the view that the Ministry may consider incorporating gist of Audit report in ITR-7 to be processed electronically so that in no case, exemption is granted without having the accounts audited.*

Recommendations

2.53 We recommend that

- a. The Ministry should ensure compliance to the existing mechanism to ascertain whether the competent authorities DGIT-E/CCIT/CIT/DIT-E have verified all the requisite documents as specified in Act for registration.

The Ministry assured (May 2013) to adhere to comply with the existing mechanism. The Ministry further stated (July 2013) that the competent authorities, DGIT(E)/CCIT/CIT/DIT(E), are statutory authorities, which discharge their functions vis-à-vis registration in accordance with the provisions of Act which includes due verification wherever prescribed.

Audit reiterates its view as we noticed cases where the competent authorities granted registration without calling for the requisite documents as specified in Act.

- b. The Ministry may consider inserting box (PAN No) in Form No 10 A and also bringing about suitable changes in Rule 17A of the Income Tax Rules making PAN a pre-requisite condition for registration.

The Ministry stated (May 2013) that incorporation of PAN in Form No 10 A would be examined.

- c. The Ministry may consider providing suitable database of registered trusts/institutions to AOs to have co-ordination between Approving Authorities and AOs. The activities beyond scope of its objects and omissions on the part of the assessee should be reported by AO to Approving Authorities so that withdrawal or penalty may be initiated against erring Institutions.

The Ministry stated (May 2013 & July 2013) that the database of non-profit organization is being developed. The exercise is under process and all approving authorities have been asked to upload details of all NPOs approved by them.

- d. The Ministry may ensure that the competent authorities adhere to the limitation of time for passing order u/s 10(23C), 12A and 80G otherwise responsibilities may be fixed to avoid allowing exemption to the ineligible Trusts.

The Ministry stated (May 2013) that time limits are generally being adhered to. The Ministry further stated (July 2013) that the statute already lays down/provides for the period of limitation within which approval/rejection of applications u/s 10(23C), 12A, 80G has to be done.

Audit reiterates its view as we noticed cases where the competent authorities did not adhere to the time limit provided in Act which led to the registration to ineligible Trusts.